

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**CONCRETE INDUSTRIES, INC., a
Division of United Building Centers,**

Plaintiff,

VS.

**DOBSON BROTHERS
CONSTRUCTION COMPANY and
WESTERN SURETY COMPANY,**

Defendants.

8:07CV192

ORDER

On July 26, 2007, the court held a conference with counsel pursuant to Fed. R. Civ. P. 16, concerning matters of importance in scheduling this case, including the defendants' request that trial be held in Lincoln, Nebraska and plaintiff's request for an extension of time to disclose rebuttal experts.

Place of Trial

This case was originally filed in Kansas state court and removed to the U.S. District Court for the District of Kansas. On May 21, 2007, the matter was transferred to the District of Nebraska pursuant to 28 U.S.C. § 1406(a) and assigned to the Omaha docket by the Clerk of the Court in accordance with NEGenR 1.4(a). The defendants subsequently requested that trial be held in Lincoln. Plaintiff filed a responsive pleading requesting trial in Omaha.

The parties do not contest the findings of the Kansas court that the contract documents at issue contain a forum selection clause that provides: "This Purchase Order and any claims or matters hereunder shall be governed by the laws of the State of

Nebraska and any action pertaining to the Purchase Order shall be brought in the appropriate courts in Lancaster County, Nebraska." Lincoln is located in Lancaster County, Nebraska.

The plaintiff has not persuaded the court that the forum selection clause should not be enforced and that trial should be held in Omaha. Accordingly, the court finds that defendants' request for trial in Lincoln should be granted. The Clerk will be directed to reassign this case to a district judge and magistrate judge who routinely hold trials in Lincoln, Nebraska.

Expert Deadline

Plaintiff requests an extension of time to August 31, 2007 to disclose rebuttal experts. The deadline had expired on June 14, 2007. Present plaintiff's counsel was not retained until June 19, 2007. During their planning conference, the parties indicated the case would not be ready to be tried until after March 2008. Noting defendants' objection, the court finds that the rebuttal expert disclosure deadline should be extended, in the interests of justice.

IT IS ORDERED:

1. Defendants' OBJECTION TO PLAINTIFF'S REQUEST FOR TRIAL AT OMAHA AND RENEWED REQUEST FOR TRIAL IN LINCOLN [47] is granted. The trial of this matter will be held in Lincoln, Nebraska.

2. The Clerk of Court shall amend the records of the court to reflect that this case will be tried to a jury in Lincoln, Nebraska.

3. The Clerk of Court shall direct this case to Chief Judge Joseph F. Bataillon for reassignment to a judge and magistrate judge who regularly sit in Lincoln, Nebraska.

4. Plaintiff is given until and including August 31, 2007 to serve rebuttal expert disclosures. A final case progression order incorporating this deadline will be entered separately.

DATED July 26, 2007.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**